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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. RAPOWER-3, LLC; INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTB1, LLC; R. GREGORY SHEPARD; NELDON JOHNSON; and ROGER FREEBORN, Defendants.	**RECEIVER'S REPLY IN SUPPORT OF MOTION FOR ORDER CANCELING SHARES OF INTERNATIONAL AUTOMATED SYSTEMS, INC.** Civil No. 2:15-cv-00828-DN District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower-3"), International Automated Systems, Inc. ("IAS"), and LTB1, LLC ("LTB1"), as well as certain affiliated subsidiaries and entities (collectively "Receivership Entities"), and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard"), hereby submits this Reply in Support of his Motion for Order Canceling Shares of IAS.

INTRODUCTION

The Receiver filed a motion ("Motion")[1] seeking an order canceling shares of IAS. In support of the Motion, the Receiver provided rationales for his recommendation, including that IAS engages in no legitimate business operations, there is no basis for the shares having any value, there is no anticipation of future business operations, there is a lack of current and accurate information available to potential buyers of these shares, and possible manipulation of the share price.[2]

Nelson Snuffer filed an opposition (the "Opposition"),[3] purportedly on behalf of IAS, arguing that the Court should not grant the Motion because IAS has operations unrelated to the solar operations and that an order canceling IAS shares would constitute a taking under the Fifth Amendment of the Constitution.

Nelson Snuffer does not have authority to file the Opposition on behalf of IAS and has not complied with the Corrected Receivership Order ("Order")[4] regarding the identification of the source of funds used to file the submission. On this basis alone the Court should not consider Nelson Snuffer's Opposition. Further, Nelson Snuffer's claims that IAS has operations unrelated to the solar scheme and potential unlawful takings are not well taken. The Opposition fails to present any evidence of IAS licensing the use of patents to the entity identified in its filing and, indeed, IAS does not even own the patents it supposedly has licensed. Additionally, claims for takings based on judicial actions are not recognized in federal courts, and, regardless, a court order canceling IAS shares would not actually interfere with a protected property interest and

[1] Docket No. 682, filed on May 27, 2019.
[2] *Id*.
[3] Docket No. 690, filed on June 7, 2019.
[4] Docket No. 491, filed on November 1, 2018.

would therefore not be a taking under federal law. Accordingly, the Court should grant the Motion and issue an order canceling IAS shares.

ARGUMENT

I. The Opposition Violates the Order and Nelson Snuffer Does Not Have Authority to Represent IAS.

At the outset, the Opposition is in clear violation of the Order because it does not "contain a statement, made under penalty of perjury, identifying the source of the funds for the filing or submission in sufficient detail to show that the funds are not Receivership Property or otherwise derived from the solar energy scheme."[5] Nelson Snuffer has repeatedly violated this provision of the Order[6] and the source of payments to Nelson Snuffer to prepare these filings remains unidentified. On this basis alone, the Court should not consider the Opposition. Indeed, considering the Opposition will only encourage Nelson Snuffer to continue to violate the plain language in the Order.

Next, Nelson Snuffer does not have the authority to submit the Opposition on behalf of IAS. The Order states that "[t]he directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys, and other agents of RaPower-3 LLC, IAS, and LTB1 LLC [] are hereby dismissed" and "[s]uch persons shall have no authority with respect to Entity Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the

[5] Docket No. 491 at ¶ 10.

[6] *See Motion to Lift Asset Freeze Order as to Solco I and XSun Energy*, Docket No. 509, filed on behalf of "Defendants collectively"; *Declaration of Neldon Johnson re 467 Findings of Fact & Conclusions of Law*, Docket No. 520, filed on behalf of Neldon Johnson; *Defendant's Reply to Response to Motion re 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy*, Docket No. 540, filed on behalf of "Defendants collectively"; *Response re 557 Status Report*, Docket No. 561, filed on behalf of Defendants; *Motion for Protective Order*, Docket No. 562, filled on behalf of Defendants; *Motion to Withdraw as Attorney*, Docket No. 563; *Response to Court's Notice Re: Compliance and Adverse Inferences*, Docket No. 644, filed on behalf of Defendants.

Receiver."[7] The Receiver has not granted Nelson Snuffer the authority to represent—or make filings on behalf of—IAS. Here again, Nelson Snuffer is in clear violation of the Order.

The Opposition makes the spurious claim that because "the Receiver is not representing the interests of IAS or its shareholders . . . the Receiver agreed Neldon Johnson could arrange to do so." No hint is given as to how the permission was supposedly given and the Receiver disputes granting any such authority. Nevertheless, the Order requires that any authority be "expressly granted by the Receiver" and here there is no evidence of any grant of authority, much less authority that was expressly granted by the Receiver.

II. IAS Has No Operations Unrelated to the Fraudulent Solar Operation.

Nelson Snuffer claims that IAS has legitimate business operations unrelated to the solar operation. In support of this claim they state that "IAS has licensed the use of the Johnson Turbine and Johnson heat exchangers / condensers for use in a 100 KW Water and Energy and Recovery System to Wisdom Farms Technology Development, LLC ('Wisdom Farms')."[8] The Receiver, however, has never seen any such license agreement, and in fact, IAS does not own the patents for the "Johnson Turbine" and "Johnson heat exchangers / condensers." Therefore, IAS could not have licensed their use to anyone. Moreover, there is no record of any payment from Wisdom Farms to IAS at all, whether in the form of royalty payments or as consideration for a supposed licensed agreement. Accordingly, the Court should disregard Nelson Snuffer's claim of a purported license from IAS to Wisdom Farms.

Nelson Snuffer relies on a Commercialization Status Report ("Status Report") by Wisdom

[7] Docket No. 491 at ¶ 9.
[8] Docket No. 690 at 2.

Farms to show that the "Johnson Turbine" and "Johnson heat exchangers/condensers" are used by Wisdom Farms.[9] As the Status Report explains "water is fed into a Johnson Turbine" and "pure water is condensed [in a Johnson heat exchanger/condenser] and is pumped to a pure water storage tank which can then be pumped out for use as distilled water or for whatever other purposes are required." The patents the Status Report is describing are the pressurized fluid turbine engine (U.S. Patent: 6,997,674) and/or the pressurized fluid bladeless turbine engine with opposing fluid intake assemblies (U.S. Patent: 7,314,347).[10] Johnson originally assigned both of these patents to the N.P. Johnson Family Limited Partnership ("NPJFLP"), not to IAS.[11] Then, based upon a Patent License Agreement dated October 23, 2012, [12] NPJFLP assigned these patents to Starlite, which licensed their use to IAS. The Patent License Agreement, however, forbids the assignment of these patents without the prior written consent of Starlite.[13] Just as the Receiver does not have documents supporting Nelson Snuffer's claim that IAS licensed the patents to Wisdom Farms, he does not have documents that show Starlite provided prior written consent to IAS for an assignment of its rights under the Patent License Agreement to Wisdom Farms.

In other words, the evidence shows that IAS does not own the patents and that it could not have licensed the use of the patents to Wisdom Farms even if it wanted to. Because there is no evidence supporting Nelson Snuffer's claim that IAS licensed—or that it could have licensed—

[9] The Status Report provides no evidence of the technology actually working or a copy of the licensing agreement. Wisdom Farms provided no affidavit. In fact, the Commercialization Status Report appears to be nothing more than a promotional piece. *See* Docket No. 690-1.
[10] It is somewhat ambiguous—and Nelson Snuffer does not explain—what patent technology the Commercialization Status Report is describing. After a review of the patents invented by Neldon Johnson, the Receiver has determined that the only possible patents the Commercialization Status Report is describing are U.S. Patent No. 6,997,674 and or U.S. Patent No. 7,314,347.
[11] A copy of the U.S. Patent and Trademark Office documents are attached hereto as Exhibit 1.
[12] Attached hereto as Exhibit 2.
[13] *Id*. at 10.

the use of the patents to Wisdom Farms, there is no need for an evidentiary hearing.[14]

III. A Court Order Canceling IAS Share Would Not Be a Taking.

Nelson Snuffer claims that if the Court enters an order canceling IAS shares it would constitute an "unlawful taking." For a number of reasons, Nelson Snuffer is wrong. A court order canceling IAS shares would not be a taking.

As an initial matter, the cases cited in the Opposition do not stand for the proposition that "[w]hen the act of this Court destroys all property value, it is a taking."[15] Instead, "[g]enerally speaking, court orders have never been viewed themselves as independently giving rise to a taking."[16] Judicial takings claims have not been adopted in federal courts.[17] Accordingly, a judicial action does not support a claim for the taking of property and an order by this Court canceling IAS shares would not be a taking as a matter of law.[18]

Next, even assuming a judicial action could support a takings claim, a court order canceling IAS shares would not constitute a taking under federal law. The "paradigmatic" taking, requiring just compensation, occurs when the government directly appropriates or physically invades private property.[19] The analysis in such a takings case "necessarily begins" with determining whether the government's action "actually interfered" with a protected property interest.[20]

Here, a court order canceling IAS shares would not actually interfere with any protected

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[14] The Receiver has not seen any documents regarding Wisdom Farms until receipt of the Opposition. Given the disclosure requirements under the Order and the Johnsons' total failure to produce documents until April 2019, the Court should not allow the use of a document that was never produced to the Receiver as required by the Order.
[15] Docket No. 690 at 4. Both of the cases cited in footnote four of the Opposition regard regulatory takings.
[16] *Brace v. United States*, 72 Fed. Cl. 337, 358 (2006), aff'd, 250 F. App'x 359 (Fed. Cir. 2007).
[17] *Id.*; *see also Shinnecock Indian Nation v. United States*, 112 Fed. Cl. 369, 385 (2013), *vacated in part on other grounds*, 782 F.3d 1345 (Fed. Cir. 2015); *Burton v. Am. Cyanamid Co.*, 775 F. Supp. 2d 1093, 1099 (E.D. Wis. 2011).
[18] *See Weigel v. Maryland*, 950 F. Supp. 2d 811, 839 (D. Md. 2013) (finding a complaint failed to plead a plausible takings claim based on a judicial takings theory).
[19] *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005).
[20] *See Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 330 (4th Cir.2005).

property interest. As the Receiver has shown, IAS has no future prospects for business operations and IAS share can have no future value. The company has never earned operating revenue. The company has never had profits. The company has an accumulated deficit of more than $40 million. External auditors issued a "going concern" audit report. Further, IAS shares have no possible future value to any shareholder under the Order because shareholders are not entitled to recover any funds recovered by the Receiver until after $50 million is paid to the U.S. Treasury. There are no prospects of the Receivership Estate yielding over $50 million in assets.[21] Indeed, the only effect of a court order canceling IAS shares would be prevention of manipulation of IAS share price and halting the sale of assets (IAS stock in control of Defendants) belonging to the Receivership Estate.

Moreover, in order to prevail on a takings claims there must be a protectable property interest.[22] IAS shares do not constitute a protectable property interest. Courts have found that owners of property "necessarily expect[] the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers."[23] And, "in the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings, [the owner] ought to be aware of the possibility that new regulation might even render his property economically worthless."[24] Such is the "burden borne to secure the advantage of living and doing business in a civilized community."[25] This is all the more true in the case of a "heavily regulated and highly contentious activity."[26]

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[21] Docket No. 682 at 6-8.
[22] *E.SPIRE Commc'ns, Inc. v. New Mexico Pub. Regulation Comm'n*, 392 F.3d 1204, 1210 (10th Cir. 2004).
[23] *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).
[24] *Id.* at 1027–28, 112 S.Ct. 2886.
[25] *Andrus v. Allard*, 444 U.S. 51, 67, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) (internal quotation marks omitted).
[26] *Holliday Amusement Co. of Charleston v. South Carolina*, 493 F.3d 404, 411 (4th Cir. 2007).

In light of the Court's many rulings and orders over the past 11 months and the volatility of share prices when stocks are sold on OTC markets, shareholders of IAS are—or should be—aware of the possibility that government action may render IAS shares worthless. A unilateral expectation that IAS shares have value does not rise to the level of a protectable property interest.[27] Accordingly, an order canceling IAS shares is not—and cannot be—a taking.

IV. Public Information is Incorrect and Misleading.

As the Motion points out, IAS is not a reporting company under SEC relegations.[28] This, however, does not change the fact the information previously disclosed by the company is incorrect and misleading. The Opposition does not dispute that material information in IAS's public reports is incorrect or omitted. Information that has not been disclosed includes Johnson's 2011 personal bankruptcy, the SEC's injunctions against Johnson and family members, the fact that the intellectual property rights which underlay the supposed solar generation program are owned by foreign entities, and the fact that courts have invalidated some of the IAS patents. Further, material information contained in the most recent annual report is inaccurate. The section on stock ownership by insiders falsely reports that Johnson owns 76% of outstanding shares when those shares are currently held by foreign corporations. No buying and selling of IAS shares should be occurring when the market (and potential new investors) lack this material information.

V. Due Process Has Been Satisfied.

The Opposition offers a copy and paste of the due process argument Nelson Snuffer has

[27] *See E.SPIRE Commc'ns, Inc.*, 392 F.3d at 1210.
[28] Docket No. 682 at 5.

made numerous times before.[29] The Court has considered and rejected these arguments.[30] It should do the same here.[31]

Notice of a potential cancelation of IAS shares has been provided 1) by the Order itself, [32] 2) the Receiver's report on publicly-traded status,[33] and 3) by the Motion. Moreover, an opportunity to be heard has been provided 1) before the Order was put in place at trial, 2) through the opportunity to respond to the Receiver's report, and 3) through the opportunity to respond to the Motion. All of these opportunities were predeprivation opportunities to be heard. Accordingly, due process has been satisfied.

VI. Nelson Snuffer Mischaracterizes the Receiver's Interactions with the SEC and FINRA.

Nelson Snuffer characterizes the fact that SEC and FINRA did not delist IAS shares when contacted by the Receiver as a decision by these regulatory bodies on the merits of IAS's business or status. This characterization is incorrect. As shown in the Motion, the SEC referred the Receiver to FINRA because IAS does not meet the thresholds of size and number of shareholders to be a reporting company and FINRA did not act because it generally will only delist shares when a corporation is dissolved, liquidated, in bankruptcy, or by a court order. After consideration, the Receiver chose to seek a court order as the quickest method to delist IAS shares and prevent fraud on potential buyers and manipulation of the share price.

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[29] *See* Docket No. 687 at fn 13 (showing that four different filings by Nelson Snuffer contain a nearly word-for-word copy and paste of the same due process argument).
[30] Docket No. 636 at 3.
[31] The Receiver hereby incorporates the due process arguments of Docket No. 687 at 4-6 and Docket No. 602 at 4-6.
[32] Docket No. 491 at ¶ 85.
[33] Docket No. 552.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion and enter an order canceling IAS shares.

DATED this 19th day of June, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr
Jonathan O. Hafen
Michael S. Lehr
Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S REPLY IN SUPPORT OF MOTION FOR ORDER CANCELING SHARES OF INTERNATIONAL AUTOMATED SYSTEMS, INC.** was filed with the Court on this 19th day of June, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on June 19th, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendant

/s/ Michael S. Lehr